IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

ORDER

M/S Babu Lal Jug Raj & Co. **Vs**. ITO, Sumerpur & Anr.

S.B. CIVIL WRIT PETITION NO.992/1993
under Article 226 & 227 of the Constitution of India.

Date of order : 8th Sept., 2006

HON'BLE MR. JUSTICE RAJESH BALIA

Mr. Rajendra Mehta for the petitioner.
Mr. Vivek Shrimali for the respondents.

Reportable

BY THE COURT:

This writ petition is directed against the issuance of notice under Section 148 of the Income Tax Act, 1961 dated 26th March, 1991 for reopening of the assessment of the petitioner's income for the assessment year 1984-85.

The brief facts leading to this petition are that for the accounting period ending on 14th Nov., 1983 relevant to assessment year 1984-85, the petitioner has

filed its return of income under Section 139(1) of the Act, 1961 on 12.6.1984 at Sumerpur.

On 3.9.1984 the Income Tax Officer passed assessment order under Section 143(3) of the Act for the assessment year 1984-85 assessing the total income of the assessee.

Thereafter a survey was conducted by the Income Tax Department on the business premises of the assessee on 6.12.1985 and certain documents and books were seized from the assessee's premises which were impounded under Section 131(3) of the Act and on basis of analysis of all those documents, the reassessment proceeding for assessment year 1984-85 was initiated by issuing notice under Section 148 on 14.4.1986. During the pendency of all these proceedings the amnesty scheme inviting the tax payers to clean their tax defaults with certain concession was brought into the effect by the Central Government and the assessee made application thereunder on 16.2.1987. The application related to surrender of income from

assessment year 1984-85 to 1986-87. For the assessment year 1984-85, the assessee surrendered the income from undisclosed sources at Rs.66,000/- stating it to be peak cash credit for that period, which could not be explained.

On making of this application the inspecting Assistant Commissioner with whom the authority vested for making an order of settlement under amnesty scheme called for report from the Income Tax Officer. The I.T.O. in its letter dated 29th March, 1987 proposed additions on account of peak cash credits determined by him from the impounded documents.

Considering the material on record including report of I.T.O. dt.29.3.1987 the Inspecting Assistant Commissioner of Income Tax, Jodhpur Range, Jodhpur vide his order dated 30th March, 1987 passed an order of settlement on agreed basis. As per the order for assessment year 1984-85, the assessee was required to surrender Rs.1,10,000/- in addition to assessed income for assessment year 1984-85 which was duly

surrendered by the assessee. Consequently, the assessment was made on the aforesaid amount and the taxes were duly paid in terms of Amnesty Scheme.

Thereafter the impugned notice was issued for initiating the re-assessment proceedings once again in respect of assessment year 1984-85. Indisputably the position is that the impugned notice was issued on 26th March, 1991 that is to say after the expiry of 4 years from the end of the assessment year 1984-85 in respect of which reassessment proceedings were sought to be initiated.

Apart from other contentions, the learned counsel for the petitioner has urged that this is a case of initiating reassessment proceedings after the assessment order under Section 143 (3) was made and after reassessment proceedings were initiated as a result of survey conducted at the business premises of the assessee and in terms of settlement proceedings under Amnesty Scheme another assessment was passed on agreed basis are no escapement of income has been

attributed to any failure or omission on the part of the assessee to file the return which was required to file on failure to disclose the facts truly and fully all material relevant for the assessment of his income. He contests the validity of the initiating reassessment proceedings vide notice dated 26.3.1991 on two fold grounds. Firstly that the reassessment order passed in pursuance of the order Annex.7 was made by the Inspecting Assistant Commissioner on his application under Amnesty Scheme considering the report submitted by the Income Tax Officer about the peak cash credits for the period relevant to the assessment year 1984-85 and the present reassessment proceedings under challenge have also been initiated on the basis of same report. Apparently, once the assessment order under Section 143(3) was passed by the Assessing Officer in the reassessment proceedings after taking into consideration the said report which has gone into consideration while making the order of settlement by the Inspecting Assistant Commissioner it is a case of change of opinion on the part of the Income Tax Officer. Mere change of opinion by considering the same

material which has already been considered and interpreted on earlier occasion, cannot give jurisdiction to the Assessing Officer to initiate proceedings under Section 147/148 of Income Tax Act.

Secondly, it was contended that since earlier reassessment order was made under Section 143(3) and all documents on the basis of which the reassessment proceedings have been initiated were in possession of the Assessing Officer himself since 1985. The omission or failure on the part of the assessee to disclose any facts truly or correctly on the basis of such documents cannot be attributed to the assessee as he was not in possession of those documents to make any submission on that behalf. He, therefore, contends that in the aforesaid circumstances, when the escapement of income, satisfaction about which even if held to be based on some material, but which failure is not attributable to omission or failure on the part of the assessee, the period of limitation for initiating the assessment proceedings is only four years from the end of expiry of the relevant assessment year which expired

on 31st March, 1989. Notices issued on 26th March, 1991 were beyond limitation, therefore, the Assessing Officer had no jurisdiction to initiate proceedings under Section 148 whether the proceedings are considered to have been taken under unamended Section 147 or amended provisions of the Section 147 which came into force w.e.f. 1.4.1989.

While the factual matrix has not been in dispute, it is contended by the learned counsel for the Revenue that the condition precedent for assuming jurisdiction to initiate proceedings under Section 148 in present case is satisfied and, therefore, no writ of prohibition restraining the respondents from proceeding further in the matter in pursuance of notice dt.26.3.1991 can be issued.

The answer to this question can be found on perusal of the reasons which are required to be recorded by the Assessing Officer before issuance of notice under Section 148. The copy of the reasons recorded by the Assessing Officer before issuance of notice as has been

supplied to the petitioner has been produced for the perusal of the Court. A perusal of the aforesaid reasons goes to show that the assessing officer has nowhere recorded his satisfaction that he has reason to believe that income chargeable to tax for assessment year 1984-85 has escaped assessment 'on account of failure or omission on the part of the assessee to disclose truly and fully all material necessary for assessment or that assessee has failed to file return'. Therefore, on the perusal of the reasons recorded by the Assessing Officer immediately before issuance of the notice gives a peep in to the mind of the Assessing Officer as to the satisfaction reached by him and the belief entertained by him which gives him jurisdiction.

As the jurisdiction has been sought to be assumed for initiating the reassessment proceedings by the Assessing Officer on 26.3.1991. The provisions governing the power of assessing officer to initiate proceedings for reassessment existing on that date are the relevant provisions. Section 147 of the Act of 1961 which was substituted w.e.f. 1.4.1989 firstly lays down

the condition when the Assessing Officer assumes jurisdiction :-

> "If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of Section 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in section 148 to 153 referred to as the relevant assessment year):"

Proviso to Section 147 envisages that in case satisfaction of the Assessing Officer about escapement of that income chargeable to tax assessment is not attributable to any default on the part of the assessee. It puts an embargo to assume jurisdiction in any case after the expiry of four years from the end of relevant

assessment year. Proviso to Section 147 reads as under:-

> "Provided that where an assessment under sub-section (3) of Section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under Section 139 or in response to a notice issued under Section sub-section (1) of Section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment for that assessment year."

Apparently, this embargo to proceed under Section 147 after expiry of 4 years is absolute where the escapement of income chargeable to tax from the assessment is not attributable to any default envisaged on the part of the assessee under the proviso where the previous assessment has taken place under Section 143

or 148.

As I have noticed above the reasons recorded by the Assessing Officer goes to show that satisfaction of the Assessing Officer about escapement of income from the assessment has not been attributed to any default on the part of the assessee which is apparent from the relevant conclusion appearing from the reasons recorded by the Assessing Officer which reads:-

> "Thus, I have reason to believe that the income of Rs.1,49,623/- chargeable tax has been escaped for the assessment year 1984-85 and accordingly necessary sanction is required to issue under Section 148 for the assessment year 1984-85. Necessary sanction has been issued by the Commissioner of Income Tax Jodhpur.

However, there is not a whisper in the reasons recorded by the Assessing Officer whether such escapement of income from the assessment, notwithstanding assessment having been made twice, once under Section 143 (3) and then under Section 148

and after getting the report of Assessing Officer before disposing of the application of Amnesty Scheme, is attributable to any default on the part of the assessee as envisaged under provision to Section 147.

In that view of the matter, the impugned notice Annex.10 issued much after expiry of period of limitation which expired on 31.3.1989 cannot confer any jurisdiction on the Assessing Officer to continue with the proceedings.

In this connection, it may be apt to recall the scope of duty cast on the assessee to disclose truly and fully all material facts necessary as has been stated succinctly by the Supreme Court in Calcutta Discount Co. Ltd. Vs. ITO [1961] 41 ITR 191 wherein the Court said that :-

> "There can be no doubt that the duty of disclosing all the primary facts relevant to the decision of the question before the assessing authority lies on the assessee.....

> Does the duty, however, extend beyond the full and truthful disclosure of all primary facts? In our opinion, the answer to this question must be in the negative. Once all the primary facts are before the assessing, he requires no further assistance by way of disclosure. It is for him to decide what inferences of facts can be reasonably drawn and what legal inferences have ultimately to be drawn. It is not for somebody else for less the assessee—to tell the assessing authority what inferences, whether of facts or law, should be drawn."

Apparently, after examining all the papers particularly with respect to question of 'peak cash credit' during the previous year relevant assessment period 1984-85 was the matter of drawing inference from the documents in possession of the respondents since December 1985. The respondents being in possession of those documents, the same were examined and analysed by the officers of the respondents before considering the application of the petitioner seeking benefit under the Amnesty Scheme during the reassessment proceedings shows that reassessment

order was passed after the documents were considered and analysed by the Assessing Officer which were seized from the assessee. The assessee has surrendered income from the undisclosed source in pursuance of notice under Section 148 at Rs.66,000/- on the basis of his opinion about peak cash credit which was on the examination by the Assessing Officer, whose was report before the Inspecting Assistant Commissioner, the Inspecting Assistant Commissioner required the assessee to surrender Rs.1,10,000/- as income from undisclosed source to which the assessee had agreed and reassessment was framed on that basis. Thereafter in March 1991 the Assessing Officer sought to assume jurisdiction by issuing notice under Section 148 again. There could not even be any reference to omission or failure on the part of assessee to draw inference from the very documents which earlier had been examined and from which inference drawn by the authority have been given effect to.

Therefore, in my opinion, the question about assumption of jurisdiction by the respondent in terms of

reasons recorded by the respondents, the Assessing Officer does not travel beyond the proviso to Section 147. The assumption of jurisdiction by the respondent Assessing Officer to initiate assessment proceedings for the assessment year 1984-85 in the circumstances after expiry of four years from the end of said assessment year that is to say after 31.3.1989 must be held to be without jurisdiction and the petitioner is entitled to succeed.

As a result, this petition is allowed. The impugned notice Annex.10 is quashed and the respondents are restrained from proceeding further in pursuance of said notice. No order as to costs.

[RAJESH BALIA], J.

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